

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

**In re: PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESAL PRICE LITIGATION**

)
) **MDL No. 1456**
) **Master File No. 01-CV-12257-PBS**
) **Subcategory Case No. 06-11337**
)

THIS DOCUMENT RELATES TO:

) **Hon. Patti B. Saris**
)

*State of California ex rel. Ven-A-Care of the Florida
Keys, Inc. v. Abbott Labs, Inc. et al.,*
Civil Action No. 03-11226-PBS

**DECLARATION OF PHILIP D. ROBBEN IN SUPPORT OF
DEFENDANTS' MOTIONS FOR PARTIAL SUMMARY JUDGMENT**

PHILIP ROBBEN declares, pursuant to 28 U.S.C. § 1746, that:

1. I am a member of the law firm of Kelley Drye & Warren LLP, counsel to Mylan Inc., Mylan Pharmaceuticals Inc., Dey L.P. and Dey, Inc. I am admitted to practice law in the State of New York and have been admitted *pro hac vice* in this action.

2. I make this Declaration in Support of Defendants' Joint Motion for Partial Summary Judgment.

3. The basis for my knowledge is my review of the files maintained by Kelley Drye & Warren LLP as part of its representation of Defendants, including the documents attached hereto, and my own personal knowledge of the facts and circumstances set forth herein.

4. Attached hereto as Exhibit 1 is a true and correct copy of the First Amended Complaint in Intervention for Money Damages and Civil Penalties for Violations of the California False Claims Act, filed on August 25, 2005 in *State of California ex rel. Ven-A-Care of the Florida Keys, Inc. v. Abbott Laboratories, et al.* (D. Mass.).

5. Attached hereto as Exhibit 2 is a true and correct copy of excerpts from the deposition of Nancy-Ann DeParle, taken on December 5, 2007.

6. Attached hereto as Exhibit 3 is a true and correct copy of a letter from William L. Roper to John F. Schlegel, dated September 1, 1987, Bates HHC002-0564-65, previously marked as Abbott Exhibit 762.

7. Attached hereto as Exhibit 4 is a true and correct copy of excerpts from the deposition of Bruce C. Vladeck, taken on June 21, 2007.

8. Attached hereto as Exhibit 5 is a true and correct copy of excerpts from the deposition of Thomas A. Scully, taken on May 15, 2007.

9. Attached hereto as Exhibit 6 is a true and correct copy of 42 C.F.R. §§ 447.331 and 447.332 (1987).

10. Attached hereto as Exhibit 7 is a true and correct copy of excerpts from the deposition of Mike Robinson, taken on February 7, 2008.

11. Attached hereto as Exhibit 8 is a true and correct copy of excerpts from the deposition of the Arkansas Department of Human Services's 30(b)(6) designee, Suzette Bridges, taken on December 10, 2008.

12. Attached hereto as Exhibit 9 is a true and correct copy of excerpts from the deposition of the Arkansas Department of Human Services's 30(b)(6) designee, Suzette Bridges, taken on December 11, 2008.

13. Attached hereto as Exhibit 10 is a true and correct copy of excerpts from the deposition of Dr. Paul L. Jeffrey, taken on June 14, 2007.

14. Attached hereto as Exhibit 11 is a true and correct copy of excerpts from the deposition of the California Department of Health Care Services' designee, Kevin Gorospe, taken on December 3, 2008.

15. Attached hereto as Exhibit 12 is a true and correct copy of the deposition of Sue Gaston, taken on March 19, 2008.

16. Attached hereto as Exhibit 13 is a true and correct copy of State of California's Objections and Responses to Defendant Abbott's First Set of Interrogatories, filed on December 21, 2007 in *State of California ex rel Ven-A-Care of the Florida Keys, Inc. v. Abbott Laboratories, et al.*, Civil Action No. 03-CV-11226-PBS (D. Mass.).

17. Attached hereto as Exhibit 14 is a true and correct copy of a report entitled "Medi-Cal Drug Price Controls, A Staff Reference Report," dated November 1977.

18. Attached hereto as Exhibit 15 is a true and correct copy of a report entitled "FY 85 HCFA Region IX, EAC Survey Report, California Medi-Cal Program, EAC Patrol Initiative" dated July 29, 1985 to August 9, 1985, Bates HHC016-0100 to HHC016-0111, previously marked as Terra Exhibit 2.

19. Attached hereto as Exhibit 16 is a true and correct copy of a letter from John Rodriguez to John L. O'Hara, Jr., dated February 4, 1986, Bates HHC016-0098 to HHC016-0099, previously marked as Terra Exhibit 3.

20. Attached hereto as Exhibit 17 is a true and correct copy of a document entitled "Final Statement of Reasons," previously marked Rodriguez Exhibit 7.

21. Attached hereto as Exhibit 18 is a true and correct copy of a memorandum from Richard P. Kusserow, Inspector General, to Louis B. Hays, Acting Administrator, Health Care Financing Administration, entitled "Use of Average Wholesale Prices in Reimbursing

Pharmacies Participating in Medicaid and the Medicare Prescription Drug Program (A-06-89-00037),” dated October 3, 1989, Bates HHD084-0022 to HHD084-0028.

22. Attached hereto as Exhibit 19 is a true and correct copy of a report entitled “How Medi-Cal and Other Health Care Providers Manage Their Pharmaceutical Expenditures,” dated August 1991, Bates CAAG/DHS0071157 to CAAG/DHS0071224, previously marked as Gorospe Exhibit 16.

23. Attached hereto as Exhibit 20 is a true and correct copy of an Office of Inspector General report entitled “Review of Pharmacy Acquisition Costs for Drugs Reimbursed Under the Medicaid Prescription Drug Program of the California Department of Health Services,” dated May 1996, previously marked as Gorospe Exhibit 18.

24. Attached hereto as Exhibit 21 is a true and correct copy of a document entitled “Record of Discussion,” dated August 30-31, 1994, Bates HHD022-0202 to HHD022-0203, previously marked as Fung Exhibit 8.

25. Attached hereto as Exhibit 22 is a true and correct copy of a document entitled “Nationwide Average Wholesale Price Review Conference,” dated August 30-31, 1994, Bates HHD142-0247 to HHD142-0250, previously marked as Fung Exhibit 9.

26. Attached hereto as Exhibit 23 is a true and correct copy of a document entitled “Record of Discussion,” dated September 27-28, 1995, Bates HHD021-0121 to HHD021-0122, previously marked as Dey Exhibit 611.

27. Attached hereto as Exhibit 24 is a true and correct copy of a document Bates CAAG/DHS0078869 to CAAG/DHS0078874, previously marked as Hillblom Exhibit 7.

28. Attached hereto as Exhibit 25 is a true and correct copy of excerpts from the deposition of Doug Hillblom, taken on September 23, 2008.

29. Attached hereto as Exhibit 26 is a true and correct copy of excerpts from the deposition of Vic Walker, taken on May 21, 2009.

30. Attached hereto as Exhibit 27 is a true and correct copy of a document entitled “Department of Health Services Proposals to Reduce Medi-Cal Expenditures for Pharmaceutical Products,” dated November 23, 1999, Bates CAAG/DHS0086972 to CAAG/DHS0086973, previously marked as Walker Exhibit 8.

31. Attached hereto as Exhibit 28 is a true and correct copy of excerpts from the deposition of Stanley Rosenstein, taken on May 19, 2009.

32. Attached hereto as Exhibit 29 is a true and correct copy of a Bill Analysis, previously marked as Rosenstein Exhibit 6.

33. Attached hereto as Exhibit 30 is a true and correct copy of excerpts from the deposition of Kevin Gorospe, taken on September 22, 2008.

34. Attached hereto as Exhibit 31 is a true and correct copy of excerpts from the deposition of Leonard Terra, taken on December 4, 2008.

35. Attached hereto as Exhibit 32 is a true and correct copy of excerpts from the deposition of the California Department of Health Services’ designee, Stanley L. Rosenstein, taken on November 6, 2008.

36. Attached hereto as Exhibit 33 is a true and correct copy of a report entitled “Study of Medi-Cal Pharmacy Reimbursement,” dated June 2002, Bates CAAG/DHS0068472 to CAAG/DHS0068570, previously marked as Rosenstein Exhibit 26.

37. Attached hereto as Exhibit 34 is a true and correct copy of a report entitled “A Survey of Acquisition Costs of Pharmaceuticals in the State of California,” dated June 2002,

Bates CAAG/DHS0068571 to CAAG/DHS0068646, previously marked as Rosenstein Exhibit 27.

38. Attached hereto as Exhibit 35 is a true and correct copy of an Enrolled Bill Report, previously marked as Rosenstein Exhibit 28.

39. Attached hereto as Exhibit 36 is a true and correct copy of a document entitled "Fact Sheet for Medi-Cal Pharmacy Reimbursement Proposal," Bates CAAG/DHS0084626 to CAAG/DHS0084627, previously marked as Rosenstein Exhibit 14.

40. Attached hereto as Exhibit 37 is a true and correct copy of an e-mail from Kevin Gorospe to Stan Rosenstein and Roberto Martinez, dated May 14, 2004, Bates CAAG/DHS-E0031787 to CAAG/DHS-E0031789, previously marked as Rosenstein Exhibit 15.

41. Attached hereto as Exhibit 38 is a true and correct copy of an e-mail from Stan Rosenstein to Thomas McCafferty, dated June 15, 2004, Bates CAAG/DHS-E0028584 to CAAG/DHS-E0028585, previously marked as Lee Exhibit 6.

42. Attached hereto as Exhibit 39 is a true and correct copy of an e-mail from Bud Lee to Stan Rosenstein and Roberto Martinez, dated June 16, 2004, Bates CAAG/DHS-E0026312, previously marked as Lee Exhibit 7.

43. Attached hereto as Exhibit 40 is a true and correct redacted copy of the *qui tam* Complaint for Money Damages and Civil Penalties under the California False Claims Act, filed in July 1998 in *State of California ex rel. Ven-A-Care of the Florida Keys, Inc. v. Abbott Laboratories, et al.* (Cal. Super. Ct.).

44. Attached hereto as Exhibit 41 is a true and correct copy of the Declaration of William S. Schneider, Deputy Attorney General, in Support of State of California's *Ex Parte* Application for Order Shortening Time and Motion to Extend the Seal Date as to All Remaining

Defendants, filed on January 3, 2003 in *State of California ex rel. Ven-A-Care of the Florida Keys, Inc. v. Abbott Laboratories*, Case No. BC 287198 (Cal. Super. Ct.), Bates CAAG/DHS0089897 to CAAG/DHS0089902.

45. Attached hereto as Exhibit 42 is a true and correct redacted copy of the *qui tam* First Amended Complaint for Money Damages and Civil Penalties under the California False Claims Act, filed in August 2002 in *State of California ex rel. Ven-A-Care of the Florida Keys, Inc. v. Mylan Pharmaceuticals, Inc.* (Cal. Super. Ct.).

46. Attached hereto as Exhibit 43 is a true and correct copy of Defendant's Opposition to Plaintiff's Motion for Preliminary Injunction, filed on February 11, 2009 in *Managed Pharmacy Care et al. v. David Maxwell Jolly*, Case No. 09-00382-CAS-MAN (C.D. Cal.).

47. Attached hereto as Exhibit 44 is a true and correct copy of Plaintiffs' Notice of Motion, Motion for Preliminary Injunction, and Memorandum in Support of Preliminary Injunction, filed on February 2, 2009 in *Managed Pharmacy Care et al. v. David Maxwell Jolly*, Case No. 09-00382-CAS-MAN (C.D. Cal.).

48. Attached hereto as Exhibit 45 is a true and correct copy of the Declaration of Kevin Gorospe in Support of Defendant's Opposition to Plaintiffs' Motion for Preliminary Injunction, filed on February 11, 2009 in *Managed Pharmacy Care et al. v. David Maxwell Jolly*, Case No. 09-00382-CAS-MAN (C.D. Cal.).

49. Attached hereto as Exhibit 46 is a true and correct copy of Order Granting Plaintiff's Motion for Preliminary Injunction, filed on February 27, 2009 in *Managed Pharmacy Care et al. v. David Maxwell Jolly*, Case No. 09-00382-CAS-MAN (C.D. Cal.).

50. Attached hereto as Exhibit 47 is a true and correct copy of the deposition of Sue Gaston, taken on January 24, 2008.

51. Attached hereto as Exhibit 48 is a true and correct copy of the deposition of Gail Sexton, taken on May 20, 2008.

52. Attached hereto as Exhibit 49 is a true and correct copy of a document entitled "Omission of Drugs From the Federal Upper Limit List in 2001," dated February 2004, previously marked as Abbott Exhibit 108.

53. Attached hereto as Exhibit 50 is a true and correct copy of a cover note and Rebate Agreement between the Secretary of Health and Human Services and Dey, dated February 28, 1991, previously marked as Dey Exhibit 23.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on November 25, 2009.

/s/Philip D. Robben
Philip D. Robben

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was delivered to all counsel of record by electronic service pursuant to Paragraph 11 of Case Management Order No. 2, by sending on November 25, 2009, a copy to LexisNexis File & Serve for posting and notification to all parties.

/s/Philip D. Robben

Philip D. Robben